

FRIDAY, MAY 7, 2010

Notice having been duly given, the regular meeting of the South Coast Air Quality Management District Board was held at District Headquarters, 21865 Copley Drive, Diamond Bar, California. Members present:

William A. Burke, Ed.D., Chairman
Speaker of the Assembly Appointee

Mayor Dennis R. Yates, Vice Chairman
Cities of San Bernardino County

Supervisor Michael D. Antonovich (arrived at 9:30 a.m.)
County of Los Angeles

Supervisor Marion Ashley
County of Riverside

Councilman Michael A. Cacciotti
Cities of Los Angeles County – Eastern Region

Supervisor Bill Campbell
County of Orange

Ms. Jane W. Carney
Senate Rules Committee Appointee

Mayor Ronald O. Loveridge
Cities of Riverside County

Dr. Joseph K. Lyou
Governor's Appointee

Members Absent:

Supervisor Josie Gonzales
County of San Bernardino

Councilwoman Judith Mitchell
Cities of Los Angeles County – Western Region

Councilwoman Jan Perry
City of Los Angeles

Mayor Miguel A. Pulido
Cities of Orange County

CALL TO ORDER: Chairman Burke called the meeting to order at 9:05 a.m.

- Pledge of Allegiance: Led by Dr. Lyou.
- Opening Comments

Councilman Cacciotti. Thanked the Legislative and Public Affairs staff for quickly putting together a presentation in order for him to give a keynote address at the International Right-of-Way Association last week. The approximately 120 guests in attendance, including District staff, were very impressed.

Dr. Joseph Lyou. Announced that he attended an Environmental Justice Advisory Group meeting on April 23, 2010 where the draft Clean Communities Plan was discussed and the Group enjoyed a presentation by Planning and Rules Manager, Susan Nakamura. The Group had a specific recommendation for the Board, to consider having staff take another look at the cumulative impacts provisions, especially as it pertains to whether and how to consider cumulative impacts when making permit decisions.

Dr. Wallerstein responded that staff is collecting comments from not only the Board's advisory groups, but also through public forums. The comments will be summarized for the Stationary Source Committee and presented with refined staff proposals and staff's response to comments.

Chairman Burke. Thanked staff for producing a wonderful Retreat for the Board members last week.

CONSENT CALENDAR

1. Minutes of April 2, 2010 Board Meeting

Supervisor Ashley announced his abstention on Item No. 1, as he was not in attendance at the April 2 Board Meeting.

MOVED BY YATES, SECONDED BY CACCIOTTI,
AGENDA ITEM 1 APPROVED, BY THE
FOLLOWING VOTE:

AYES: Burke, Cacciotti, Campbell, Carney,
Loveridge, Lyou, and Yates.

NOES: None.

ABSTAIN: Ashley.

ABSENT: Antonovich, Gonzales, Mitchell, Perry
and Pulido.

2. Set Public Hearings June 4, 2010 to Consider Amendments and/or Adoption to AQMD Rules and Regulations
 - (A.) Amend Rule 1143 - Consumer Paint Thinners and Multi-purpose Solvents
 - (B.) Amend Regulation XXVII - Climate Change and Establish Bank for Rule 2702 - Greenhouse Gas Reduction

MOVED BY CAMPBELL, SECONDED BY LYOU,
AGENDA ITEM 2 APPROVED, BY THE
FOLLOWING VOTE:

AYES: Ashley, Burke, Cacciotti, Campbell,
Carney, Loveridge, Lyou, and Yates.

NOES: None.

ABSENT: Antonovich, Gonzales, Mitchell, Perry
and Pulido.

Budget/Fiscal Impact

3. Recognize Additional Proposition 1B – Lower Emission School Bus Program Funds from CARB and Approve School Bus Replacement and Retrofit Awards and Amend Contracts under Lower Emission School Bus Program
4. Execute Contracts to Cosponsor Electric Bus Demonstration and Quick-Charge Infrastructure Projects
5. Execute Sole Source Contract for Sponsorship of CAPCOA Climate Change Forum
6. Issue Program Announcement for Low-Emission Leaf Blower Vendors
7. Execute Contract to Re-Establish Testing Facility and Quantify PM Emission Reductions from Commercial Charbroiling Operations
8. Execute Contract to Develop Fuel Cell-Gas Turbine Hybrid System for On-Board Locomotive Applications

9. Execute Contracts to Cosponsor Aftertreatment Emission Control Technology Demonstration Projects for Biogas Engines
10. Designate Funds from Interest Earned in Rule 1309.1 Priority Reserve Fund and Execute Contract for Coachella Valley PM10 Clean Streets Management Program
11. Appropriate Funds from Designation for Litigation and Enforcement and Authorize Amending/Initiating Contracts with Outside Counsel
12. Approve Contract Modifications and Awards under FYs 2008-09 and 2009-10 AB 2766 Discretionary Fund Work Programs

Information Only/Receive and File

13. Legislative & Public Affairs Report
14. Report to Legislature and CARB on AQMD's Regulatory Activities for Calendar Year 2009
15. Hearing Board Report
16. Civil Filings and Civil Penalties Report
17. Rule and Control Measure Forecast
18. Lead Agency Projects and Environmental Documents Received by AQMD
19. Status Report on Major Projects for Information Management Scheduled to Start During Last Six Months of FY 2009-10

Supervisor Ashley announced his abstention on Item Nos. 9 and 12, due to campaign contributions from Waste Management and Burrtec Waste, respectively.

Agenda Item Nos. 4 and 6 were withheld for comment and discussion.

MOVED BY YATES, SECONDED BY CACCIOTTI,
AGENDA ITEMS 3, 5, AND 7 THROUGH 19
APPROVED, BY THE FOLLOWING VOTE:

AYES: Ashley (*except Item #9 and #12*), Burke,
Cacciotti, Campbell, Carney, Loveridge,
Lyou, and Yates.

NOES: None.

ABSTAIN: Ashley (*Item #9 and #12 only*).

ABSENT: Antonovich, Gonzales, Mitchell, Perry
and Pulido.

20. Items Deferred from Consent Calendar

4. Execute Contracts to Cosponsor Electric Bus Demonstration and Quick-Charge Infrastructure Projects

The following individual addressed the Board on Agenda Item No. 4.

GEORGE KARBOWSKI, Foothill Transit

Reported that the first bus arrived at their Pomona facility on April 30, 2010; expressed his excitement about this project and the huge impact it has on the future of the air quality in the South Coast Air Basin; noted they look forward to the future which will bring a total of 12 buses to complement the 291 line which runs in the Pomona and La Verne areas; and extended an invitation to Board members and AQMD staff to see the bus at the Pomona facility.

MOVED BY YATES, DULY SECONDED, AGENDA
ITEM 4 APPROVED, BY THE FOLLOWING VOTE:

AYES: Ashley, Burke, Cacciotti, Campbell,
Carney, Loveridge, Lyou, and Yates.

NOES: None.

ABSENT: Antonovich, Gonzales, Mitchell, Perry
and Pulido.

6. Issue Program Announcement for Low-Emission Leaf Blower Vendors

Councilman Cacciotti asked for clarification regarding the schedule for the leaf blower exchange, noting that the City of South Pasadena has enacted an ordinance that requires all leaf blowers to be CARB low emission compliant, and it appears the effective date of October 1, 2010 may need to be extended. Based on the contract execution date and completion of the program date, he questioned whether it would be fair to assume that the different exchange events will be offered sometime between October 2010 and April 2011.

Dr. Wallerstein confirmed that Councilman Cacciotti was correct, and assured the Board that staff will expedite the process in order to hold the first event at the earliest possible date in the South Pasadena area.

MOVED BY YATES, SECONDED BY CACCIOTTI,
AGENDA ITEM 6 APPROVED, BY THE
FOLLOWING VOTE:

AYES: Ashley, Burke, Cacciotti, Campbell,
Carney, Loveridge, Lyou, and Yates.

NOES: None.

ABSENT: Antonovich, Gonzales, Mitchell, Perry
and Pulido.

BOARD CALENDAR

- 21. Administrative Committee
- 22. Climate Change Committee
- 23. Legislative Committee
- 24. Mobile Source Committee
- 25. Stationary Source Committee
- 26. Technology Committee
- 27. Mobile Source Air Pollution Reduction Review Committee

28. California Air Resources Board Monthly Report

Agenda Item No. 23 was withheld for discussion.

MOVED BY YATES, SECONDED BY CACCIOTTI, THE BOARD APPROVED AGENDA ITEMS 21, 22, AND 24 THROUGH 28 AS RECOMMENDED, RECEIVING AND FILING THE COMMITTEE REPORTS, BY THE FOLLOWING VOTE:

AYES: Ashley, Burke, Cacciotti, Campbell, Carney, Loveridge, Lyou, and Yates.

NOES: None.

ABSENT: Antonovich, Gonzales, Mitchell, Perry and Pulido.

23. Legislative Committee

Dr. Lyou expressed concerns regarding two bills; the first being the bill by Senator Carper, S. 2995, regarding establishing the national trading program, which he believed did not need to be debated by the Board. The second, which he suggested be placed on the watch list, was SB 1033 by Senator Wright. The bill involves restricting the proposed CARB trading program on GHG to only the regulated entities and to exclude anyone else. The intent of the legislation is to prevent private equity firms from manipulating the market prices and investing heavily in order to capture the market and subsequently drive up the cost of GHG emission offsets. His concern was that the brokers serve an important function in these markets, and as currently written, the law would prohibit brokers from actually purchasing credits, which may impede their ability to serve their function to facilitate trading. He suggested that the Board take a watch position on the item and talk to the author and businesses to make sure the bill does not infringe on the liquidity of the market.

Ms. Carney, Chair of the Legislative Committee, commented that, since Senator Wright was helpful to the District in legislative dealings last year, the Legislative Committee wanted to take as cooperative an approach as possible to stay consistent with the goals and objectives of the agency, which is why the decision was made to take the position to support, with amendments. The position that the Committee has recommended encourages further discussion with the author.

Dr. Wallerstein commented that staff will discuss Dr. Lyou's concern with Senator Wright, but staff still recommends a support position on this bill. He agrees with the Senator's intent which is to minimize compliance costs for

companies; and suggested that if the wording is a problem for the companies that are being regulated, or the brokers, they will speak to the Senator themselves.

Dr. Lyou replied that he was glad to hear that staff is willing to continue discussions on this matter, and he hopes that the business community would consider becoming involved on this issue, as he believes this will impact them. He expressed his desire to ensure that if the cap and trade program is established, that it is as functional as possible; and his hope that CARB would be responsible enough to build in protections similar to the District's RECLAIM program if the price gets too high.

MOVED BY CARNEY, SECONDED BY ASHLEY,
THE BOARD APPROVED AGENDA ITEM 23 AS
RECOMMENDED, ADOPTING THE POSITIONS ON
LEGISLATION AS SET FORTH BELOW, BY THE
FOLLOWING VOTE:

AYES: Ashley, Burke, Cacciotti, Campbell,
Carney, Loveridge and Yates.

NOES: Lyou.

ABSENT: Antonovich, Gonzales, Mitchell, Perry
and Pulido.

Bill/Title	Recommended Position
S. 2995 (Carper) National Uniform Multiple Air Pollutant Regulatory Program for the Electric Generating Sector	Support with Amendments
ACR 109 (Nestande) Roy Wilson Memorial Highway	Support with Enhancements
AB 2311 (Mendoza) California Global Warming Solutions Act of 2006: transportation fuels: review	Watch
SB 908 (Wyland) Meal and rest periods: exceptions	Support
SB 1033 (Wright) California Global Warming Solutions Act of 2006: allowances	Support with Amendments
SB 1299 (Lowenthal) Vehicles: vehicle miles traveled (VMT) fee	Watch

(Supervisor Antonovich arrived at 9:30 a.m., during staff presentations on Items 29/30)

PUBLIC HEARINGS

- 29. Adopt Executive Officer's FY 2010-11 AQMD Budget and Work Program
- 30. Amend Regulation III – Fees

Dr. Wallerstein requested that the Board open the public hearing on Items 29 and 30 as a single opportunity since they are interrelated, so that the public could speak to both items.

Mike O'Kelly, Chief Financial Officer, gave the staff presentation on Item 29; and Dr. Laki Tisopoulos, Assistant DEO of Planning, Rule Development and Area Sources, gave the staff presentation on Item 30. An errata sheet for Item 29 containing corrections to pages 22, 30 and 58 of the FY 2010-11 Draft Budget and Work Program was provided to the Board Members and copies made available to the public. An errata sheet for Item 30 containing a deletion/addition to the Amend Rule 306 – Plan fees was provided to the Board Members and copies made available to the public.

Dr. Wallerstein added that the provision pertaining to Rule 317 does not get activated unless the Board adopts that program; it is acting as a placeholder in the event that the Board eventually adopts Rule 317 with that type of mechanism.

Dr. Lyou commented that it appears that if the Board adopts this language now in Regulation III, the District is committing that any fees that get collected be handled in this way.

Dr. Wallerstein responded that the regulated community was anxious that the Board was going to adopt Rule 317 ahead of this fee regulation, which is generally brought to the Board just once a year. Therefore, staff drafted this language so that if the Board acted on Rule 317 today that this item would be covered and they would have an absolute assurance as to the way that the current staff proposal is drafted. Keeping this provision in the Regulation should also help facilitate discussions with U.S. EPA staff in order to gain more concrete answers from them.

In response to Dr. Lyou's inquiry if it would be possible to amend the Rule 317 language if needed, Dr. Wallerstein confirmed that could be done, if that was the desire of the Board.

The public hearing was opened, and the following individuals addressed the Board on Agenda Items 29 and 30.

BILL LAMARR, California Small Business Alliance

Thanked staff for putting together a budget that reflects the agency's commitment to continue to seek ways to operate more efficiently; and commended staff for recommending approval of a rebate on emission fees which would, in essence, offset the 2.1 percent CPI increase in fees. Expressed, however, their opposition to Rule 317 and any reference to it in the Regulation.

CURT COLEMAN, Southern California Air Quality Alliance

Expressed his appreciation that members of the Budget Advisory Committee are able to give early input into the budgetary process; and his belief that this positive partnership will be beneficial to both the District and the community in order keep the agency funded efficiently and effectively.

GREG ADAMS, Los Angeles County Sanitation District

Pointed out to the Board what he believed was a transposition in the Board Letter of items B and C regarding priority for spending Rule 317 funds.

Dr. Tisopulos replied that the prioritization mirrors that given by Supervisor Campbell and adopted by the Board at the April 2009 Board meeting.

Greg Adams responded that he remembered Supervisor Campbell's motion prioritizing the funds to be spent at the source, then at sources commonly owned by that same entity and thirdly within the neighborhood, not as it is written now.

Dr. Wallerstein replied that staff will comply with whatever the Board desires in this regard, as they were just trying to reflect what was understood to be the previous desire of the Board.

Supervisor Campbell added that he is unsure how the sequence was changed, but he concurred with Mr. Adams as to the prioritizing of spending Rule 317 funds.

There being no further public testimony on the items, the public hearing was closed.

Supervisor Campbell asked why the District cannot forgo the CPI increase in lieu of issuing the CPI adjustment and then providing a rebate.

Dr. Wallerstein explained that staff wanted the regulated community to understand that, ultimately, there is going to have to be an adjustment for the fees; and offering the rebate should allow them to plan for that future adjustment. As there is a limitation on the ability to balance the budget using past revenues, staff and the Board need to ensure that there are sufficient funds available. As a result of the future outlook, staff recommended the increase and rebate this year; and next year the Board has full discretion as to whether or not to make adjustments.

In reference to Supervisor Campbell's inquiry about the impact of waiving a CPI increase, Barbara Baird, District Counsel, explained that the statute allows the Board to raise the fees by the CPI in the current year without making additional findings.

Supervisor Campbell commented that since the law does not require that a CPI increase be made, the Board should consider forgoing the increase this year and then take another look at the economy and the needs of the organization next year to see if an adjustment is warranted for either one year or two years' worth.

In response to Dr. Burke's comment about businesses having to pay up front and then wait for a rebate, Dr. Wallerstein indicated that companies would receive a note on their bill showing the rebate, so they are billed for a lesser amount.

Dr. Lyou added that the net effect is basically the same whether the Board approves the increase and rebate this year, and then exercises the option next year to retroactively decrease that fee. This year the proposal is to rebate two parts of the increase – the annual permit renewal fee and the emissions fee, which keeps things more simple from an administrative standpoint. He asked counsel to confirm that the additional findings would not be required as long as the Board stays within the CPI increases from year to year.

Ms. Baird clarified if the Board increases by the CPI, there is no need for additional findings this year. If the Board does not increase by the CPI this year, and then tries to catch up next year, then additional findings are required. The additional findings are that the fee is necessary to support the agency's operations and they are equitably apportioned among the fee payers. An increase that exceeds the CPI needs to be phased in over a two-year period under the existing statute; therefore the District would be playing catch up, if the Board forgoes a CPI increase.

Mayor Yates commented that, as he has seen the effects with water districts in the area, it is not prudent to put off a CPI increase. Deciding whether or not to prepare businesses now for something more to come, or waiting and then instituting a large increase, is just a matter of choosing the least offensive method.

Dr. Lyou added that aside from his concerns regarding Rule 317, he had three other issues that he wanted to discuss with the Board that staff has been made aware of and will investigate and analyze for next year. He suggested that, in addition to having the ability to withhold an exemption based on cancer risk, this specific provision include cancer burden similar to what is in place for Rule 1401. Another potential area for expansion is the fees collected on air toxics; currently fees are collected on approximately 20 air toxics, while the complete list of air toxics is greater than 200. He expressed hope that it could be proposed in a revenue-neutral fashion so that the fees that are collected under the toxics program do not change, but it would be more inclusive of the variety of the air toxics in play. His last comment was regarding federal regulation on Title V that mandates the District to recover the cost of the Title V program, but he does not believe the District currently does; and he would like to see if there is a way to construct the fees and the budget so that the District can recover the costs of the program in compliance with that federal law.

Dr. Wallerstein commented that the three issues that Dr. Lyou has recently raised would, at a minimum, need analysis and discussion with the Board and the public. He explained that staff will review those items and may either recommend to include them or recommend that they not be included next year, after they have gone through the appropriate comment and approval stages.

Supervisor Ashley spoke in support of staff's proposal, having served on the Board of a water district for many years and seeing the negative effect of not taking annual CPI increases as needed.

Ms. Carney announced her abstention as to the Rule 317 portion of Regulation III, because Loma Linda University Medical Center is a source of income to her.

MOVED BY CACCIOTTI, SECONDED BY YATES, AND UNANIMOUSLY CARRIED, (Absent: Gonzales, Mitchell, Perry and Pulido), THE FOLLOWING ACTIONS ON AGENDA ITEMS 29 AND 30 APPROVED AS RECOMMENDED BY STAFF, WITH THE MODIFICATIONS TO ITEM NOS. 29 AND 30 AS SET FORTH IN THE ERRATA SHEETS AND NOTED BELOW:

- 1) REMOVE FROM RESERVES AND DESIGNATIONS ALL AMOUNTS ASSOCIATED WITH THE FY 2009-10 BUDGET;
- 2) APPROVE TOTAL APPROPRIATIONS OF \$129,819,623;
- 3) APPROVE A PROJECTED JUNE 30, 2011 RESERVES AND DESIGNATIONS FUND BALANCE OF \$34,217,471 AND TOTAL UNDESIGNATED OF \$19,007,455;

- 4) APPROVE TOTAL REVENUES OF \$129,819,623;
- 5) APPROPRIATE \$179,000 FROM THE UNDESIGNATED FUND BALANCE TO THE FY 2009-10 EXECUTIVE OFFICE BUDGET, SERVICES AND SUPPLIES MAJOR OBJECT, PUBLIC NOTICE AND ADVERTISING ACCOUNT TO REIMBURSE THE BUDGET FOR THE INITIAL EXPENDITURES RELATED TO THE *ADVERTISING AND PUBLIC OUTREACH INITIATIVE TO MINORITY COMMUNITIES TO INCREASE AWARENESS OF IMPACTS OF AIR POLLUTION* APPROVED BY THE BOARD IN DECEMBER 2009;
- 6) APPROVE THE DELETION OF 23 VACANT AUTHORIZED POSITIONS AS DETAILED IN THE DRAFT BUDGET;
- 7) SET UP A NEW DESIGNATION FOR OTHER POST EMPLOYMENT BENEFITS (OPEB) AND TRANSFER \$2,952,496 FROM THE UNDESIGNATED FUND BALANCE TO THIS NEW DESIGNATION; AND
- 8) ADOPT RESOLUTION NO. 10-13, AMENDING REGULATION III - FEES, INCLUDING RULES 301, 303, 304, 304.1, 306, 307.1, 308, 309, 311, 313, 314 AND 315, AND CERTIFYING THE NOTICE OF EXEMPTION.

Agenda Item No. 29 modifications:

Pages 22, 30 and 58 of the FY 2010-11 Draft Budget and Work Program were revised to reflect the correction of clerical errors.

Agenda Item No. 30 modification:

Deletion/Addition of the following text to PAR 306:

(r)(2)(B) Private citizens-Individuals or households wishing to participate are exempt from the plan fees for reductions used to offset personal, household or event GHG emissions.

(Mayor Loveridge left the meeting during presentation of Item 31.)

31. Amend Rule 317 - Clean Air Act Non-Attainment Fees
(Continued from April 2, 2010 Board Meeting)

Dr. Wallerstein introduced the item indicating that the staff presentation would be in two parts. Barbara Baird would give a brief overview of the Federal Clean Air Act requirements and also key provisions of the recent EPA guidance for flexibilities on implementing this provision of the Clean Air Act. Dr. Tisopulos would then present the staff proposal. He indicated that staff would be recommending a series of actions, in lieu of recommending approval of the rule in its current state.

Ms. Carney left the meeting after announcing her abstention on Agenda Item No. 31 because of Loma Linda University being a source of income to her.

Barbara Baird, District Counsel, gave a presentation regarding flexibilities, penalties and litigation relevant to Rule 317.

In response to Supervisor Campbell's inquiry into how a cyclical business is defined, Ms. Baird responded that staff proposes to place the burden of demonstration on the industry to show if they are cyclical or if their emissions vary significantly from year to year. Staff will use their judgment to determine whether or not it is significantly different.

Supervisor Campbell raised the concern that the nature of the economy has driven businesses to a cyclical state, as opposed to the nature of the business. He questioned whether the Board could make a finding that the economy is a satisfactory basis for concluding that a business' operation is cyclical.

Ms. Baird replied that is essentially what the staff proposal does by providing a chart that gives the various adjustment factors for each industry. It concludes that everyone is cyclical because of the economy.

Dr. Wallerstein added that Dr. Tisopulos' presentation shows an amendment to account for those that are not adequately covered by the table that staff has incorporated by reference in the rule.

Supervisor Campbell questioned whether June 30, 2011 is a submittal date or the date by which an adopted rule must be approved.

Ms. Baird responded that it is in between those two dates; it is the date by which the U.S. EPA must find that the submittal is complete, so the Board cannot wait until June 30, 2011 to submit the Rule.

Mayor Yates commented that he is receiving feedback from stakeholders regarding their opposition to Rule 317, but he questioned whether they are aware of the negative effects that would come about if the Board did not act.

Dr. Wallerstein responded that those who follow the activities of the agency and participate in the working groups are keenly aware of the Board's quandary, and the Board will have a chance to hear their comments during the public hearing portion.

Dr. Lyou asked for clarification on the timeline of the submittal and approval process.

After Ms. Baird replied that U.S. EPA is statutorily required to do their review within 60 days, Dr. Lyou conveyed the importance of getting the Rule submitted to the appropriate parties in a timely fashion in order to avoid any delays in getting it to U.S. EPA.

Dr. Laki Tisopulos, Assistant DEO of Planning, Rule Development and Area Sources, gave the staff presentation. He presented the Board with the following recommendations: 1) Pursue an Amendment to the CAA; 2) Pursue a Mobile Source Fee; 3) Formally Request AB118 Credit; 4) Adopt Staff Proposal no later than January 2011 as Last Resort and, additionally to Seek Written Concurrence from U.S. EPA on Staff's Approach.

Dr. Wallerstein explained that the San Joaquin Air District was given the authority to increase motor vehicle fees by more than twenty dollars for a wide variety of purposes including potentially to close a budget gap. Staff believes it would be necessary to get nonprofits as well as the business community to broadly support that approach if the Board chose to further pursue that option.

Dr. Lyou asked what specific changes the District would be seeking in the proposed Clean Air Act Amendments.

Dr. Wallerstein responded that the District is basically seeking repeal of the Section 185 provision. The difficulty is there are only three air districts in the country that are being subject to this fee, all in California. The Sacramento District has adopted language that is consistent with the Clean Air Act, and the San Joaquin District is in the midst of the approval process. The South Coast District faces a difficult task in its effort and staff recommends creating a list of alternative remedies. If the District is successful in receiving 118 funds from the State, and the U.S. EPA agrees, the problem would be solved for a number of years. Over the next few years, after the U.S. EPA promulgates a new ozone standard later this summer, there will be a number of states across the country that will become subject to this fee relative to the new ozone standard. At that point, the District will have a broad array of allies, and just the prospect of this may help in the District's arguments over the latter part of this year once U.S. EPA promulgates that new standard.

Mayor Loveridge asked what has been the outcome of conversations with staff at U.S. EPA.

Dr. Wallerstein replied that the U.S. EPA has indicated since this particular provision of Federal Clean Air Act is so limiting and it does not provide much flexibility, the flexibility that the U.S. EPA has provided in the written guidance is the best they are going to do.

In response to Supervisor Campbell's inquiry into how a mobile source fee is calculated, Dr. Wallerstein commented that there are an estimated 13 million vehicles in the basin. Staff recommended that the District try to lock U.S. EPA in on allowing the District to do what has been recommended in the staff proposal. Companies are already paying a Section 185 fee, it was just not adopted and listed as a 185 fee; therefore, when the other Regulation III fees are adjusted, that should address the problem for about 65 percent of the facilities. Many of the other 35 percent of the facilities pay only a small fee, so that is not really of concern. Dr. Wallerstein expressed concern with the entities such as the U.S. Navy and major local hospitals being subject to substantial fees. He believes that a dollar or at the most two-dollar vehicle registration fee will solve the problem.

Supervisor Campbell asked if the rebate program would be left in place as it relates to the major emitters, and if staff would then do a calculation of what the offsets should be through mobile sources.

After Dr. Wallerstein confirmed this, Supervisor Campbell voiced his support of that approach. He then recalled that the "adjusted for regulatory effects" language on the errata sheet was something that set off concern by a number of the operators in the past.

Dr. Wallerstein acknowledged that the calculation is complicated, but staff has recently been persuaded to include this for the very limited number of cases when this may arise.

Supervisor Antonovich commented that Section 185 will have a devastating impact on the creation of jobs and the economic viability of the nation. He expressed his distaste with the Federal Government mandating that the Board implement a rule. He expressed also a need to aggressively pursue with the Congressional delegation, and also partner with the other Districts across the nation now, in order to effect change.

Dr. Wallerstein replied that he will be attending the spring meeting of the National Association of Clean Air Agencies as a member of the Board of Directors, and he will share Supervisor Antonovich's comments with the members in order to possibly move it to more of a national agenda. He asked the Board to consider allowing him, on a very limited basis, to take a couple of small business owners that are impacted by this fee to Washington D.C. to meet with legislators.

Dr. Burke expressed the importance of being prepared on multiple fronts and mapping out a few paths in order to ensure one of them will work. He agreed that one of these approaches should be to explore the opportunity for legislation to collect a small amount from registration fees in order to mitigate the damage to small businesses.

Mayor Yates added that if the Board is going to direct staff to seek legislation allowing for a fee or tax on vehicle registration, there should be some distinction in the fees paid between low- and zero-emission vehicles and the more heavily polluting cars and trucks. Those that are contributing more to the pollution problem should be penalized more than those who have made efforts to reduce their vehicle emission levels. Mayor Yates went on to say that the last amendments to this law were made in 1990 and technology has advanced significantly; yet many businesses are unable to meet these stringent standards.

Dr. Lyou supported Mayor Yates' comments about the vehicle registration fee, but feels it is important to characterize it as a fee and not a tax, especially if it is tied to the amount of pollution associated with the car. He believes it will not be possible to get consensus regarding eliminating Section 185 through Clean Air Act Amendments among a broad group of stakeholders, because many people recognize the need to have motivation and incentives in place in order to attain clean air standards. While he agrees that this is a poorly written law and that it probably should be amended in order to address this issue in a more equitable and fair manner, he does not agree with eliminating it completely. He fears that the U.S. EPA may have overstepped their function with the flexibility they have offered in the guidance document. Dr. Lyou noted that while the aggregation provision may be of benefit in a situation where a facility owner may choose to take extra emission reductions in environmental justice areas, it could also be of a detriment if they choose to reduce emissions in an area that is not defined as an environmental justice community and continue to produce harmful emissions in the environmental justice communities. He asked Dr. Wallerstein how this potential negative impact might be prevented.

Dr. Wallerstein acknowledged that it could go either way, but as unwelcome as the fees are, he does not believe it will drive the business plans or control requirements of these large companies. Staff believes that mitigating risks in environmental justice communities should continue to be handled through the District's programs and that the Board should not be concerned about whether a fee will drive business decisions.

The public hearing was opened, and the following individuals addressed the Board on Agenda Item 31.

BOB WYMAN, Latham & Watkins on behalf of the Regulatory Flexibility Group

Commented on the feasibility of a Clean Air Act amendment or other congressional action, emphasizing the important principal which would form the basis of such an amendment is that well regulated and well controlled units

should not be taxed, but should be rewarded and recognized for the efforts they have made. He believes if this is articulated effectively congress will amend the statute or take other action to prevent those individuals from being penalized. As a member of the Board of Directors of the Los Angeles Chamber of Commerce, he was disappointed that the District did not join their meetings after being asked to do so. They had small business people speak at the meetings and it would have been helpful if staff had been present to respond to their concerns. The message that staff is now exposing should not be hidden, but should be more widespread in order to be a success.

BILL LAMARR, California Small Business Alliance

Expressed his gratitude for the supportive comments regarding Ms. Bollman's testimony at the Board Retreat which gave his Alliance hope that in spite of the impending deadline, the District is willing to work to find a better way to demonstrate a commitment to a rule making process that encourages local companies to do business in Southern California. As a result of various discussions and meetings, he has found multiple officials understand the inequities embedded in Section 185 and appear willing to lend their support in correcting some of those problems.

Dr. Burke commented that he planned to appoint a committee, headed by Mayor Pulido, to put together a group to go to Washington D.C. and meet with those that may be influential in these issues in order to address those deficiencies at the source.

LEE WALLACE, Southern California Gas and San Diego Gas and Electric

Offered his support in relation to a delegation going to speak with lawmakers, as the flexibility that the U.S. EPA has offered is not going to solve the problems in the region. He noted his particular interest in the multi-site aggregation provision, which is one of the few actual emission reduction portions of the rule. It provides an opportunity for an operator of multiple facilities to aggregate it and then over-control at one site rather than have to attempt to get a twenty percent shave at each site, which is a similar concept used in other rules and the basic philosophy behind the successful RECLAIM program. The multi-site aggregation provision is also being questioned in Texas, so the issues that are going to be decided in Texas could also impact what we are doing here. His organization is not prepared to support this rule until EPA has given a clear answer on this issue. He posed the question whether these emissions would have occurred anyway, considering the fact that the opportunity to pay a fee in lieu of making an effort to reduce emissions is being offered.

LEE FRIEDERSDORF, RR Donnelley

Explained that his plant in Los Angeles employs about 350 people currently, which is a decrease from 400 three years ago; and that his plant operates at the BACT standard, which is costly since companies in other states

do not have these regulations. Having to pay more fees discourages his company from further investing in the plant and adding jobs or putting existing volume from other facilities into the plant. He supports the idea of some sort of fee on vehicle licenses or a similar approach. His plant is already challenged to be cost competitive with printers in other states and even with printers in different parts of this state that do not have the same regulations. At a minimum, he feels that Rule 317 should not be approved without a BACT exclusion.

WENDY and BRAD BOLLMAN, Newport Laminates

Mrs. Bollman replied to questions that have been posed to her since the Board Retreat including whether she is BACT compliant and whether she can pass the fees along to her customers. Her reply to the first question is that she is in compliance, and she is currently using low VOC resins. In response to the second question, she cannot offset the increase in fees by raising prices, because they compete with local and even international manufacturers. She explained another product that her company makes is a Nose Cone which fits on top of a large truck to deflect wind in order to lower fuel consumption. She asked the Board to recognize that companies that produce a small amount of initial emissions to produce a product with long term positive effects are being heavily penalized.

Mr. Bollman further explained that as a small company his business is really struggling to survive. Their largest customer has left the state and taken 800 jobs with them because it was too expensive to do business in California. He asked the Board to recognize that the total carbon footprint over the lifetime of the many fiberglass products they manufacture makes them more efficient than any other medium. He is concerned that they are operating at such a low level now, that once business does pick up, the approximately 1500 percent increase in fees will be quite burdensome and impossible to absorb. He expressed support for the idea of having mobile sources share a majority of the burden with the local industries.

GERRY BONETTO, Vice President of Printing Industries of California

Expressing great reservations with the impending economic impacts of this Rule, he presented a list of printing companies, along with the number of employees they have had to lay off in recent years, as well as those companies that could no longer afford to stay in business; and noted that they are very concerned that utilizing 2010 as a baseline puts an economic burden on the industry.

MICHAEL HOOD, President and Owner of Hood Manufacturing

Expressed his disappointment that Mayor Pulido was not in attendance to hear the comments regarding this item; and indicated he welcomes the opportunity to travel to Washington D.C. to speak to U.S. EPA to become

involved in the efforts as he did during the BACT regulation discussions. He feels all stakeholders need to be involved to find a workable solution.

CURT COLEMAN, Southern California Air Quality Alliance

Expressed support for the latest proposals that staff provided, and is pleased that the Board has agreed to look into the motor vehicle fee as a contingency position.

GREG ADAMS, Los Angeles County Sanitation District

Expressed his concern with a fundamental flaw in the Rule that sets the baseline at the end of 2010, which could be disastrous for growth and modernization.

LUIS CABRALES, Coalition for Clean Air

Agreed that mobile sources of pollution are a large part of the problem in our Basin and expressed their understanding that many small industries and businesses will be impacted by Rule 317 fees; however, he impressed that the agency cannot sit idle and allow stationary sources to continue to pollute the Basin. He urged the Board to direct staff to set a stricter fee rule, noting that there are many large industries and large sources of pollution which are located in communities of color and low-income communities, and the District cannot ignore the fact that those communities have to pay to address health problems created by this pollution.

NEAL RICHMAN, Breathe LA

Emphasizing that dangerous levels of air pollution have a tremendous effect on local health, especially in environmental justice communities, he stressed the importance of looking at stationary polluters and realizing the geographic elements involved when making decisions about these proposed amendments, and asked that the Board be cognizant of the overall cost, both physical and economic, to those who are affected by health problems as a result of air quality.

ADRIAN MARTINEZ, Natural Resources Defense Council

Emphasizing that the District should be focusing its attention on attainment of the one-hour ozone standard, he noted that Section 185 was designed to make the fee go away once the standard is attained, and NRDC does not support seeking a rollback of Section 185. If the Board is going to make an effort to roll back 185, he suggested it develop a plan for attainment of the one-hour ozone standard. He noted that his extreme disappointment with the current state of the rule was further detailed in a comment letter submitted by NRDC and other groups regarding the proposed rule.

Dr. Wallerstein commented that even if all stationary source emissions are eliminated, the Basin would probably still violate the one-hour ozone standard this year.

MAYA GOLDEN-KRASNER, Communities for a Better Environment

Expressed belief that the District's focus on reducing the overall fee burden on stationary sources in the South Coast Air Basin detracts from the mission of increasing air quality in the basin, and explained the need to focus on both stationary sources and mobile sources. Expressed their concern, especially with the health impacts in communities where there are major stationary sources, such as refineries; and they are primarily located in low income communities of color which have higher rates of asthma and other respiratory problems. Urged the Board to look at ways to keep the Clean Air Act requirement intact while also providing relief for small businesses.

JESSE MARQUEZ, Coalition for a Safe Environment

Expressed concern that the proposed rule fails to guarantee that hot spot environmental justice communities will get any significant funds to be able to reduce the environmental and public health impacts; it also fails to guarantee that the SCAQMD will meet the one-hour ozone National Ambient Standard; and it fails to include a contingency plan in the event data shows that we will not meet the one-hour standard. Expressing their belief that the proposed fee is inadequate to stop industries from polluting the air, he urged that the baseline emissions that are used should include all criteria and toxic pollutants that cause public health impacts and death. Expressed that they do not support aggregation of sources under common ownership, due to the fact that some of the petroleum industries have numerous facilities with some that are very low emitting or not even in the same community, and it would dilute the impact.

SHARON RUBALCAVA, Attorney, Alston and Bird, LLP

Expressed her support of the staff proposals that were presented, and emphasized that the execution is going to be critical. She commented that the key issue is that the baseline is fixed, once set; and expressed concern with the impact that will have on the ability of local businesses to retool and expand in the future. She suggested, if a delegation is going to Washington D.C., they need to focus on the failure of the federal government to regulate mobile sources that are causing so many problems.

RUDY TAPIA, Xerxes Corporation

Explained that his company is a fiberglass tank manufacturer who in an effort to contain emissions, has implemented a non-atomized spray up system with low system resins; and have met Rules 1162 and 1132 in order to stay in compliance with District regulations. There is no room to improve throughput; they have had to lay off 34 employees since November, and the future outlook is not promising. He expressed support for efforts to look into other ways to work on amending this rule.

There being no further public testimony on this item, the public hearing was closed.

Dr. Burke reiterated his intent to put together a delegation to visit Washington D.C. in order to address the appropriate decision makers. The Board would also like staff to explore the possibility of a vehicle registration fee increase to offset the cost of this rule; and he would also like to continue to discuss with U.S. EPA any viable modifications to their guidance on the implementation of this rule.

Dr. Lyou explained that while he does not oppose pursuing amendments to the Clean Air Act, he does not agree with the National Resource Defense Council's opinion and does support a revisiting of Section 185 in order to make it fairer without completely eliminating any incentive to reduce emissions.

Due to a lack of seven concurring votes on Item 31, the Board was unable to take action, and the Board's consideration of this matter was therefore continued to the June 4, 2010 meeting by operation of Board procedures.

PUBLIC COMMENT PERIOD – (Public Comment on Non-Agenda Items, Pursuant to Government Code Section 54954.3)

There were no comments from the public on non-agenda items.

CLOSED SESSION

The Board recessed to closed session at 11:25 a.m., pursuant to Government Code section 54956.9(a) to confer with its counsel regarding pending litigation which has been initiated formally and to which the District is a party, as follows:

- NRDC, et al. v. SCAQMD, et al., Los Angeles Superior Court Case Nos. BS105728 and BS110792;
- NRDC, et al. v. SCAQMD, et al., U.S. District Court Case No. CV08-05403 GW (PLAx);

- CCAT, et al. v. State of California; SCAQMD, et al., Los Angeles Superior Court Case No. BS124264;
- NPCA v. SCAQMD, Court of Appeal, 4th Appellate District, Division Three, Case No. G040122; Supreme Court of California Case No. S177823;
- Association of American Railroads, et al. v. SCAQMD, et al., U.S. District Court Case No. CV06-1416 JFW (PLAx) and United States Court of Appeals, 9th Circuit, Case No. 07-55804;

In addition, it was also necessary for the Board to recess to closed session pursuant to Government Code sections 54956.8 to confer regarding real property negotiations regarding:

Property: 21825 Copley Drive, Diamond Bar, California 91765

Agency Negotiator: Barry Wallerstein

Negotiating Party: City of Diamond Bar

Under Negotiation: Price and terms of lease

and 54597.6(a) to meet with

- designated representatives regarding represented employee salaries and benefits or other mandatory subjects within the scope of representation [Negotiator: William Johnson;

Represented Employees: Teamsters Local 911 & SCAQMD Professional Employees Association]

and to meet with

- labor negotiators regarding unrepresented employees

[Agency Designated Representative: William Johnson; Unrepresented Employees: Designated Deputies and Management and Confidential employees].

Following closed session, General Counsel Kurt Wiese announced that there were no reportable actions taken in closed session.

ADJOURNMENT

There being no further business, the meeting was adjourned by the General Counsel at 11:55 a.m.

The foregoing is a true statement of the proceedings held by the South Coast Air Quality Management District Board on May 7, 2010.

Respectfully Submitted,

Denise Pupo
Senior Deputy Clerk

Date Minutes Approved: _____

Dr. William A. Burke, Chairman

ACRONYMS

BACT = Best Available Control Technologies
CAA = Clean Air Act
CARB = California Air Resources Board
CPI = Consumer Price Index
FY = Fiscal Year
GHG = Greenhouse Gas
HRA = Health Risk Assessment
NOx = Oxides of Nitrogen
PM = Particulate Matter
PM₁₀ = Particulate Matter ≤ 10 microns
PM_{2.5} = Particulate Matter ≤ 2.5 microns
RECLAIM = Regional Clean Air Incentives Market
RFP = Request for Proposals
RFQ = Request for Quotations
RTCs = RECLAIM Trading Credits
SIP = State Implementation Plan
U.S. EPA = United States Environmental Protection Agency
VOC = Volatile Organic Compound